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REQUEST

Bill/Resolution No.: CSS# 384 (HESS)
 Title: An Act relating to food banks

FISCAL DETAIL

Agency Affected: Environmental Conservation
 Program Category Affected: NRMEC

Sponsor: FERGUSON
 Requestor: _____
 Date of Request: 2/10/84

BRU, Program or Subprogram(s) Affected: _____
Environmental Quality Mgmt.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		0	0	0		
200 TRAVEL		0	0	0		
300 CONTRACTUAL		0	0	0		
400 SUPPLIES		0	0	0		
500 EQUIPMENT		0	0	0		
600 LAND & STRUCTURES		0	0	0		
700 GRANTS, CLAIMS		0	0	0		
800 MISCELLANEOUS		0	0	0		
TOTAL OPERATING		0	0	0		
CAPITAL		0	0	0		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0		
FEDERAL FUNDS	0	0	0		
OTHER	0	0	0		
TOTAL	0	0	0		

POSITIONS:

FULL-TIME	0	0	0		
PART-TIME	0	0	0		
TEMPORARY	0	0	0		

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joe Cladouhos, Director Phone: 465-2640
 Division: Environmental Quality Management Date: 2/15/84

Approved by Commissioner: Richard Al Neve Date: 2/15/84
 Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

4/23/84

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

STAFF REVIEW

CS HR SB 384 (HESS), "An Act relating to food banks," by Senators Ferguson, Kelly, Rodey, et al, amends the Alaska Food, Drug and Cosmetic Act (AS 17.20) by adding language relating to the liability of food banks and individual donors. CSSB 384 (HESS) is identical to CSHB 496 (HESS) by Representatives Koponen and Miller. The Department of Environmental Conservation, Division of Environmental Quality Management, estimates the fiscal impact of CSSB 384 (HESS) to be Zero for FY 85, FY 86, and FY 87 (Please see fiscal note for greater detail).

The bill provides that a donor to a food bank is not subject to civil or criminal liability arising from an injury or death attributable to the condition of donated food if the injury or death is not a result of the gross negligence, recklessness, or intentional misconduct of the donor. The bill specifically states that nothing in the bill prohibits the donation of canned goods with misbrands or missing labels, and food that would not be readily marketable because of appearance or grade, or because it is surplus.

The bill provides that a food bank is not liable for injury or death attributable to the condition of donated food if the food bank inspects the food received in a reasonable manner and if the injury or death is not the direct result of the negligence, recklessness, or intentional misconduct of the food bank. Food banks may accept misbranded food or food with missing labels, or food that would not be readily marketable because of appearance or grade, or because it is surplus.

"Donor" is defined in such a way as to exclude a person who acts in a commercial capacity as a manufacturer, packer, processor, bottler, or similar entity, if that activity is the person's primary activity.

The bill does not provide for an effective date and would therefore become law 90 days after the Governor signs the bill.

(Legislative Reporting Service, 1/30/84, p. 122, and 1/16/84, pp. 44 - 45)

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN



POUGH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

April 23, 1984

TO: Representative Mae Tischer
FROM: Bill Lovell, Professional Assistant, HESS Committee *bu*
RE: Analysis of CSSB 384 (HESS)

I have prepared the following analysis of the Senate HESS Committee Substitute for Senate Bill 384, "[a]n Act relating to food banks."

CSSB 384 (HESS) amends AS 17.20 (Alaska Food, Drug and Cosmetic Act) by adding new sections, the effects of which are described below.

Sec. 17.20.345 provides that a donor to a food bank is not subject to civil or criminal liability for damages resulting from the consumption of donated food, unless such damages are the result of extreme negligence, recklessness, or misconduct by the donor. In other words, gross negligence, recklessness, or misconduct must be proven before a food bank donor is held civilly or criminally liable for damages attributable to the consumption of donated food. This provision subjects food bank donors to a more stringent test than food bank operators when determining negligence, recklessness, or misconduct.

The bill specifically states that nothing in this section prohibits the donation of apparently suitable goods solely because of missing labels, appearance, or lower grade or marketability.

Sec. 17.20.346 provides that a food bank is not subject to civil or criminal liability for damages resulting from the consumption of goods received and distributed by the food bank if, prior to distribution, the food bank had inspected the food in a reasonable manner; if the food bank had had no actual or constructive knowledge that the food was adulterated, tainted, or contaminated; and if the aforementioned damages were not the result of negligence, recklessness, or misconduct by the operators of the food bank. In other words, simple negligence, which is more easily proven than

Analysis of CSSB 384 (HESS)
April 23, 1984
Page 2

gross negligence, must be proven before a food bank operator can be held civilly or criminally liable for damages attributed to the consumption of food distributed by the food bank. This provision of the bill subjects food bank operators to a less stringent test than donors when determining negligence, recklessness, or misconduct.

The bill specifically states that nothing in this section prohibits a food bank from distributing apparently suitable food solely because of missing labels, appearance, or lower grade or marketability.

Sec. 17.20.347 defines "donor," as used in AS 17.20.345 and 17.20.346, as including a person, farmer, retailer, slaughter-house under state supervision, freight company, distributor, wholesaler, or similar entity. This provision specifically permits operators of state supervised slaughter-houses to donate suitable meats to food banks.

The section specifically excludes from the definition of "donor," any person who acts in a commercial capacity as a manufacturer, packer, processor, bottler, or similar entity, if that activity is the person's primary activity.

This section further provides that "food bank" means an organization recognized by the state or federal government as a nonprofit organization and that operates principally to collect, inspect, and salvage donated food for free distribution to needy persons.

/wtl



Official Business


Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Representative Mae Tischer, Chair
House Health, Education, and Social
Services Committee

FROM: Senator Frank Ferguson 

DATE: April 23, 1984

SUBJ: Senate Bill 384

In Nome, Barrow and Kotzebue we have food donors and banks at many of our churches who, under current law, run the risk of civil and criminal liability for any injury or death arising out of the use of any donated food.

This bill provides protection for honest, civic-minded individuals and businesses who wish to donate edible foodstuffs for those less fortunate. However, should the donor provide food knowing that it could cause injury or death, they would face both criminal and civil liability.

HOUSE HESS - HB 496/SB 384

§ 17.10

ALASKA STATUTES

§ 17.20

Chapter 10. Uniform Narcotic Drug Act.

[Repealed, § 26 ch 45 S.L.A. 1982. For current law, see AS 11.71 and 17.30.]

Cross references. — For transition provisions, see sec. 23 and 24, ch. 45, S.L.A. 1982 in the Temporary and Special Acts.

Chapter 12. Depressant, Hallucinogenic and Stimulant Drugs.

[Repealed, § 26 ch 45 S.L.A. 1982. For current law, see AS 11.71 and 17.30.]

Cross references. — For transition provisions, see sec. 23 and 24, ch. 45, S.L.A. 1982 in the Temporary and Special Acts.

Chapter 15. Drugs.

[Repealed, § 26 ch 45 S.L.A. 1982. For current law, see AS 11.71 and 17.30.]

Cross references. — For transition provisions, see sec. 23 and 24, ch. 45, S.L.A. 1982 in the Temporary and Special Acts.

Chapter 20. Alaska Food, Drug and Cosmetic Act.

Article

1. Food (§§ 17.20.010 - 17.20.076)
2. Drugs and Devices (§§ 17.20.080 - 17.20.135)
3. Cosmetics (§§ 17.20.140 - 17.20.155)
4. False Advertising (§§ 17.20.160 - 17.20.175)
5. Enforcement (§§ 17.20.180 - 17.20.280)
6. Prohibited Acts and Penalties (§§ 17.20.290 - 17.20.330)
7. General Provisions (§§ 17.20.340 - 17.20.380)

Opinions of attorney general. — The Department of Health and Social Services has the authority to regulate the sanitary practices of canneries even though the products manufactured in the canneries are solely for export to a foreign country. 1974 Op. Atty Gen No 3, withdrawing its opinion of June 21, 1971.

Collateral references. — What is a "drug," "device," and "new drug" within the definitions of those terms in § 201(g)(1), (h), and (i) of the Federal Food, Drug, and Cosmetic Act as amended (21 USC § 321(g)(1), (h), and (i)), 5 ALJ Fed. 843.

§ 17.20.010

FOOD AND DRUGS

§ 17.20.020

Article 1. Food.

Section

10. Definitions and standards for food
20. Adulterated food
30. Tolerances for added poisonous ingredients
40. Misbranded foods
45. Misbranding halibut

Section

50. Emergency permit control
60. Suspension and reinstatement of emergency permit
70. Inspection by department
72. Enforcement authority
75. Definitions

Collateral references. — 35 Am. Jur. 2d, Food, § 2 et seq.
36A C.J.S., Food, § 9(2).

Sec. 17.20.010. Definitions and standards for food. When, in the judgment of the commissioner, honest and fair dealing in the interest of consumers will be promoted, the department shall adopt regulations fixing and establishing for food or class of food a reasonable definition and standard of identity, a reasonable standard of quality, and reasonable standards of fill of container. In prescribing a definition and standard of identity for food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards adopted shall conform as far as practicable to the definitions and standards adopted under authority of the federal act. The department shall establish a mobile canned food inspection service available upon request to food packers or processors inside the state. (§ 9 ch 120 S.L.A. 1949; am § 1 ch 125 S.L.A. 1955)

Sec. 17.20.020. Adulterated food. (a) Food is adulterated if

(1) it bears or contains a poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food is not considered adulterated under this paragraph if the quantity of the substance does not ordinarily render it injurious to health;

(2) it bears or contains added poisonous or added deleterious substance which is unsafe within the meaning of AS 17.20.030;

(3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(4) it has been produced, prepared, packed, or held under insanitary conditions in which it may have become contaminated with filth, or in which it may have been rendered diseased, unwholesome, or injurious to health;

(5) it is, in whole or in part, the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse;

(6) its container is composed, in whole or in part, of a poisonous or deleterious substance which may render the contents injurious to health.

(b) Food is adulterated if

(1) a valuable constituent has been omitted or abstracted in whole or part;

(2) a substance has been substituted in whole or part for a valuable constituent;

(3) damage or inferiority has been concealed;

(4) a substance has been added or mixed or packed with it to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(c) Confectionery is adulterated if it bears or contains an alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per cent, harmless natural wax not in excess of four-tenths of one per cent, harmless natural gum, and pectin. This subsection does not apply to confectionery containing less than one-half of one per cent by volume of alcohol derived solely from the use of flavoring extracts, or to chewing gum containing harmless nonnutritive masticatory substances.

(d) Food is adulterated if it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal act. (§ 10 ch 129 S.L.A. 1949)

Collateral references. — Trichinosis, Liability of packer, foodstore, or restaurateur for causing trichinosis, 90 ALR3d 373-417; 11 Am. Jur. POF, pp. 373-417; botulism poisoning, 16 Am. Jur. POF, pp. 451-373-271

Sec. 17.20.030. Tolerances for added poisonous ingredients. A poisonous or deleterious substance added to food, except where the substance is required in the production of food or cannot be avoided by good manufacturing practice, is unsafe for purposes of the application of AS 17.20.020(a)(2). When the substance is required or cannot be avoided, the department shall adopt regulations limiting the quantity of it to the extent necessary for the protection of public health. A quantity exceeding the limits fixed is unsafe for purposes of the application of AS 17.20.020(a)(2). While a regulation limiting the quantity of a substance in the case of any food is in effect, the food is not, by reason of bearing or containing an added amount of the substance, adulterated within the meaning of AS 17.20.020(a)(1). In determining the quantity of the added substance to be tolerated in or on food, the department shall consider the extent to which the use of the substance is required or cannot be avoided in the production of each article and the other ways in which the consumer may be affected by that or other poisonous or deleterious substances. (§ 13 ch 129 S.L.A. 1949)

Sec. 17.20.040. Misbranded foods. Food is misbranded if

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;

(4) its container is made, formed, or filled so as to be misleading;

(5) it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations are permitted, and exemptions for small packages shall be established by regulations prescribed by the department;

(6) a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with the conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in terms which make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by AS 17.20.010, unless (A) it conforms to the definition and standard, and (B) its label bears the name of the food specified in the definition and standard and the common names of optional ingredients other than spices, flavoring, and coloring present in the food as required by regulation;

(8) it purports to be or is represented as (A) a food for which a standard of quality has been prescribed by regulations, and its quality falls below that standard, unless its label bears, in the manner and form the regulations specify, a statement that it falls below that standard; or (B) a food for which a standard of fill of container has been prescribed by regulation as provided by AS 17.20.010 and it falls below the applicable standard of fill of container, unless its label bears, in the manner and form as the regulations specify, a statement that it falls below that standard;

(9) it is not subject to the provisions of (7) of this section, unless it bears labeling clearly giving (A) the common or usual name of the food, if any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that however spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; however, to the extent that compliance with the requirements of (B) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department, but the requirements of (B) of this paragraph do not

apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations adopted by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties the commissioner determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemption shall be established by regulations adopted by the department. (5 11 ch 129 SLA 1949)

Collateral references. — Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food, 52 ALR3d 959.

Sec. 17.20.045. Misbranding halibut. No person may label or offer for sale any food fish product designated as halibut, with or without additional descriptive words, unless the food fish product is *Hippoglossus* or *Hippoglossus Stenolepis*. A person who violates this section is guilty of misbranding food under provisions of this chapter. (§ 1 ch 59 SLA 1968)

Sec. 17.20.050. Emergency permit control. When the department finds after investigation that the distribution in the state of a class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing, be injurious to health, and that the injurious nature cannot be adequately determined after the articles have entered commerce, it, in that case only, shall adopt regulations providing for the issuance of permits to manufacturers, processors, or packers of that class of food, to which shall be attached the conditions governing the manufacture, processing, or packing of that class of food, for a temporary period of time as may be necessary to protect the public health. After the effective date of the regulations, and during the temporary period, no person may introduce or deliver for introduction into commerce the food so manufactured, processed or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer of it holds a permit issued by the commissioner. (5 12(a) ch 129 SLA 1949)

Sec. 17.20.060. Suspension and reinstatement of emergency permit. The commissioner may suspend immediately upon notice a permit issued under AS 17 20 050 if it is found that the conditions of the permit have been violated. The holder of a suspended permit may apply for the reinstatement of the permit, and the commissioner, immediately after prompt hearing and an inspection of the estab-

lishment, shall reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended. (5 12(b) ch 129 SLA 1949)

Sec. 17.20.070. Inspection by department. An officer or employee designated by the commissioner shall have access to a factory or establishment, the operator of which holds a permit from the commissioner, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for inspection is ground for suspension of the permit until access is freely given. (5 12(c) ch 129 SLA 1949)

Sec. 17.20.072. Enforcement authority. The commissioner is responsible for enforcing AS 17.20.010 — 17.20.075, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 51, § 19 (1981))

Sec. 17.20.075. Definitions. In AS 17.20.010 — 17.20.075,
(1) "commissioner" means the commissioner of environmental conservation;
(2) "department" means the Department of Environmental Conservation. (Executive Order No. 51, § 19 (1981))

Article 2. Drugs and Devices.

Section	Section
80. Adulterated drugs and devices	110. Sale of new drugs
90. Misbranded drugs and devices	120. Application for sale of new drugs
100. Exemptions in case of drugs and devices	130. Exemptions
105. Preparation of drug prescription by pharmacist	132. Enforcement authority
	135. Definitions

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, § 17 et seq., 28 et seq. 69

Aspirin poisoning, 25 Am. Jur. POF, pp. 725-764

Negligence in use of diet and weight control drugs in treatment of obesity, 21 Am. Jur. POF 2d, pp. 203-314; halibut misbranding, 20 Am. Jur. POF 2d, pp. 190-222

28 C.J.S., Drugs and Narcotics Supplement, § 100 et seq.

Hospital's liability for negligence in connection with preparation, storage, or dispensing of drug or medicine, 9 ALR3d 679

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptives, 70 ALR3d 315.

Administering or prescribing drugs for weight control, 1 ALR4th 236.

Administering or prescribing birth control pills or devices, 9 ALR4th 372.

Validity of inspection conducted under provisions of Federal Food, Drug, and Cosmetic Act (21 USC §§ 374(a)) authorizing FDA inspectors to enter and inspect food, drug or cosmetic factory, warehouse, or other establishment, 18 ALR Fed. 234.

Validity, construction, and application of provision of § 502(f) of Federal Food, Drug, and Cosmetic Act (21 USC § 352) relating to, and objecting to

proposed repeal or amendment of regulation providing for certification of antineoplastic drugs, to state "reasonable grounds" therefor, 22 ALR Fed. 88*.

Sec. 17.20.080. Adulterated drugs and devices. (a) A drug or device is adulterated if:

(1) it consists in whole or in part of a filthy, putrid, or decomposed substance;

(2) it has been produced, prepared, packed, or held under insanitary conditions in which it may have been contaminated with filth, or in which it may have been rendered injurious to health;

(3) it is a drug and its container is composed, in whole or in part, of poisonous or deleterious substance which may render the contents injurious to health; or

(4) it is a drug and it bears or contains, for purposes of coloring only, a coal tar other than one from a batch certified under the authority of the federal act.

(b) A drug is adulterated if it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below the standard set forth in the compendium. The determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence or inadequacy of tests or methods of assay, those prescribed under authority of the federal act. A drug defined in an official compendium is not adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in the compendium, if its difference in strength, quality, or purity is plainly stated on its label. When a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it is subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) A drug is adulterated if it is not subject to the provisions of (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) A drug is adulterated if a substance has been

(1) mixed or packed with it to reduce its quality or strength; or

(2) substituted wholly or in part for it. (S 14 ch 129 SLA 1949)

Sec. 17.20.090. Misbranded drugs and devices. A drug or device is misbranded

(1) if its labeling is false or misleading in any particular;

(2) if it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms

of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations shall be permitted and exemptions for small packages shall be established by regulations adopted by the department;

(3) if a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with conspicuousness as compared with other words, statements, designs, or devices, in the labeling and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of the purchase and use;

(4) if it is for use by man and contains a quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbonal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane, or a chemical derivative of any of them, which has been by the commissioner after investigation found to be and by regulations under this chapter designated as habit forming; unless its label bears the name, and quantity or proportion of the substance or derivative and in juxtaposition with it the statement "Warning - May be habit forming";

(5) if it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (A) the common or usual name of the drug; and (B) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of alcohol, and including, whether active or not, the name and quantity or proportion of bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyosine, hyoscyamine, arsenic, digitalis glucosides, mercury, quabain, strophanthin, strychnine, thyroid, or derivative or preparation of any of these substances contained in them; however, to the extent that compliance with the requirements of (B) of this paragraph is impracticable, exemptions shall be established by regulations adopted by the department;

(6) unless its labeling bears (A) adequate directions for use; and (B) adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in the manner and form necessary for the protection of users; however, where a requirement of (A) of this paragraph as applied to a drug or device is not necessary for the protection of the public health, the department shall adopt regulations exempting the drug or device from these requirements;

(7) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed in the compendium; however, the method of packing may be modified with the consent of the commissioner, and when a drug is recognized

in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it is subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States; and not to those of the United States Pharmacopoeia;

(8) if it has been found by the commissioner to be a drug liable to deterioration, unless it is packaged in the form and manner and its label bears a statement of the precautions the department by regulation requires as necessary for the protection of public health; and no regulation shall be established for a drug recognized in an official compendium until the commissioner has informed the appropriate body charged with the revision of the compendium of the need for packaging or labeling requirements and that body has failed within a reasonable time to prescribe the requirements;

(9) if it is a drug and its container is made, formed, or filled so as to be misleading or if it is an imitation of another drug; or if it is offered for sale under the name of another drug;

(10) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in its labeling;

(11) if (A) it is a drug sold at retail and contains any quantity of aminopyrine, barbituric acid, cinchophen, pituitary, thyroid, or their derivatives, or (B) it is a drug or device sold at retail and its label as originally packed bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian, unless it is sold on a written prescription signed by a member of the medical, dental, or veterinary profession licensed by law to administer the drug or device, and its label as dispensed bears the name and place of business of the seller, the serial number and date of the prescription, and the name of the member of the medical, dental or veterinary profession, and the prescription shall not be refilled except on the written authorization of the prescribing physician, dentist or veterinarian. (§ 15 ch 129 S.L.A. 1949)

Collateral references. — Failure to warn as basis of liability under doctrine of strict liability in tort, 63 ALR5d 234.
Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger to use of vaccine or prescription drug, 91 ALR5d 710.

Sec. 17.20.100. Exemptions in case of drugs and devices. A drug sold on a written prescription signed by a member of the medical, dental, or veterinary profession, except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail, is exempt from the requirements of AS 17.20.030(2) and (3) if (1) the member of the medical, dental, or veterinary profession is licensed by

law to administer the drug, and (2) the drug bears a label containing the name and place of business of the seller, the serial number and date of the prescription, and the name of the member of the medical, dental, or veterinary profession. (§ 10 ch 129 S.L.A. 1949)

Sec. 17.20.105. Preparation of drug prescription by pharmacist. (a) In preparing a drug prescription a pharmacist shall indicate on the drug container the name and strength of the drug contained in it, unless specifically directed otherwise by the prescribing physician, osteopathic physician, dentist or veterinarian. If a drug is a mixture of pharmacologically active substances, only the name of the mixture need be indicated on the container, or in the absence of a name, the term "physician's mixture" may be used.

(b) In preparing a prescription, a pharmacist may not substitute a drug for a registered brand or trade name product specified unless the pharmacist obtains permission from the author of the prescription; but if the prescribing physician, osteopathic physician, dentist or veterinarian is temporarily unavailable, the pharmacist may, if unable to supply the drug requested, substitute a drug or preparation of approximately equal therapeutic value so long as the pharmacist notifies the author of the prescription at an early opportunity. (§ 1 ch 17 S.L.A. 1971)

Sec. 17.20.110. Sale of new drugs. A person may not sell, deliver, offer for sale, hold for sale or give away a new drug unless

(1) an application for it has become effective under the federal act, or

(2) when not subject to the federal act unless the drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling of it, and before selling or offering it for sale there has been filed with the commissioner an application setting out

(A) full reports of investigations which have been made to show whether or not the drug is safe for use;

(B) a full list of the articles used as components of the drug;

(C) a full statement of the composition of the drug;

(D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug;

(E) samples of the drug and articles used as components of it which the commissioner requires; and

(F) specimens of the labeling proposed to be used for the drug. (§ 17(a) ch 129 S.L.A. 1949)

Collateral references. — Right of prescribe, doctrine for treatment of illness medical patent to obtain, or physician to state cases, 6 ALR5d 219

Sec. 17.20.120. Application for sale of new drugs. The application provided for in AS 17.20.110 is effective on the 60th day after the filing of it. If the commissioner finds, after notice to the applicant and providing an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling, the commissioner shall, before the effective date of the application, issue an order refusing to permit the application to become effective. An order refusing an application to become effective may be revoked by the commissioner. (§ 17(b) (d) ch 129 SLA 1949)

Sec. 17.20.130. Exemptions. AS 17.20.110 does not apply to a drug (1) intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs provided the drug is plainly labeled "for investigational use only"; or (2) licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1934 ed. title 42, chap. 4). (§ 17(c) ch 129 SLA 1949)

Editor's notes. — The Virus, Serum, and Toxin Act has been superseded by 42 U.S.C. 262

Sec. 17.20.132. Enforcement authority. The commissioner is responsible for enforcing AS 17.20.090 — 17.20.135, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 51, § 19 (1981))

Sec. 17.20.135. Definitions. In AS 17.20.080 — 17.20.135,

(1) "commissioner" means the commissioner of health and social services;

(2) "department" means the Department of Health and Social Services. (Executive Order No. 51, § 19 (1981))

Article 3. Cosmetics.

Section	Section
140. Adulterated cosmetics	152. Enforcement authority
150. Misbranded cosmetics	155. Definition

Sec. 17.20.140. Adulterated cosmetics. A cosmetic is adulterated if

(1) it bears or contains a poisonous or deleterious substance which may render it injurious to a user under the conditions of use prescribed in the labeling or advertisement of it, or under conditions of use which are customary or usual; however, this provision does not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed: "Caution — This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This prod-

uct must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness." and the labeling of which bears adequate directions for preliminary testing, and for the purposes of this paragraph and (5) of this section the term "hair dye" does not include eyelash dyes or eyebrow dyes;

(2) it consists in whole or in part of a filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under insanitary conditions by which it may have become contaminated with filth or made injurious to health;

(4) its container is composed, in whole or in part, of a poisonous or deleterious substance which may make the contents injurious to health;

(5) it is not a hair dye and it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal act. (§ 18 ch 129 SLA 1949)

Collateral references. — Liability of seller of cosmetics for injuries on theory of breach of warranty as affected by buyer's or user's allergy or unusual susceptibility to injury from article, 20 ALR2d 908.

Sec. 17.20.150. Misbranded cosmetics. A cosmetic is misbranded if

(1) its labeling is false or misleading in any particular;

(2) it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations adopted by the department;

(3) a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on it with conspicuousness as compared with other words, statements, designs, or devices, in the labeling, and in terms which make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is made, formed, or filled so as to be misleading. (§ 19 ch 129 SLA 1949)

Sec. 17.20.152. Enforcement authority. The commissioner of environmental conservation is responsible for enforcing AS 17.20.140 — 17.20.155, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 51, § 19 (1981))

Sec. 17.20.155. Definition. In AS 17.20.140 — 17.20.155, "department" means the Department of Environmental Conservation. (Executive Order No. 51, § 19 (1981))

Article 4. False Advertising.

Section

160. False advertising generally
170. Specified false advertising

Section

172. Enforcement authority
175. Definitions

Collateral references. — 3 Am. Jur. 2d, Advertising, §§ 2, 4 et seq.; 37 Am. Jur. 2d, Food and Drugs, § 66.
What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act (15 USC §§ 45, 62), 60 ALM Fed. 16.

Sec. 17.20.160. False advertising generally. An advertisement of a food, drug, device, or cosmetic is false if it is false or misleading in any particular. (§ 20(a) ch 129 S.L.A. 1949)

Sec. 17.20.170. Specified false advertising. The advertisement of a drug or device representing that it has an effect on albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease is false advertising. An advertisement not in violation of AS 17.20.160 is not false under this section if it is disseminated only to members of the medical, dental, or veterinary profession, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of the drug or device. However, when the commissioner determines that an advance in medical science has made a self-medication safe as to any of the diseases named in this section, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for the disease, subject to the conditions and restrictions the commissioner considers necessary in the interests of public health. This section shall not be construed as indicating that self-medication for diseases other than those named in this section is safe or efficacious. (§ 20(b) ch 129 S.L.A. 1949)

Sec. 17.20.172. Enforcement authority. The commissioner is responsible for enforcing AS 17.20.160 — 17.20.175, and may delegate that authority as appropriate. This section does not limit the authority of peace officers. (Executive Order No. 61, § 19 (1981))

Sec. 17.20.175. Definitions. In AS 17.20.160 — 17.20.175,
(1) "commissioner" means the commissioner of health and social services;
(2) "department" means the Department of Health and Social Services. (Executive Order No. 61, § 19 (1981))

Article 5. Enforcement.

Section

180. Regulations
190. Hearings
200. Inspections and examinations
210. Reimbursement for expenses
220. Publication of reports and information
230. Detention or embargo of goods

Section

240. Petition for libel for condemnation
250. Destruction of adulterated or misbranded goods
260. Exemption from destruction
270. Immediate destruction of contaminated food
280. Injunction proceedings

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, §§ 7 et seq., 28 et seq.; 36 Am. Jur. 2d, Food, § 64 et seq.
Seizure of food, 9 Am. Jur. Trials, pp. 59-136.

Sec. 17.20.180. Regulations. The Department of Environmental Conservation and the Department of Health and Social Services may adopt regulations for the efficient enforcement of their respective portions of this chapter. Each department may make the regulations conform, in so far as practicable, with those adopted under the federal act. (§ 21(a) ch 129 S.L.A. 1949; an Executive Order No. 51, § 20 (1981))

Effect of amendments. — The 1981 amendment substituted "Department of Environmental Conservation and the Department of Health and Social Services" for "department," substituted "adopt" for "promulgate" preceding "regulations" and added "of their respective portions" following "efficient enforcement" in the first sentence. In the second sentence, the amendment substituted "each" for "the" preceding "department" and substituted "adopted" for "promulgated" following "with those."

Sec. 17.20.190. Hearings. Hearings authorized or required by this chapter shall be conducted under the provisions of the Administrative Procedure Act (AS 41.62). (§ 21(b) ch 129 S.L.A. 1949)

Sec. 17.20.200. Inspections and examinations. (a) The commissioner of environmental conservation or an agent shall have free access at reasonable hours to a factory, warehouse, or establishment in which foods or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter a vehicle being used to transport or hold these foods or cosmetics in commerce, in order to

(1) inspect a factory, warehouse, establishment, or vehicle to determine if the provisions of the commissioner's respective portions of this chapter are being violated, and

(2) secure samples or specimens of a food or cosmetic after paying or offering to pay for the sample.

(b) The commissioner of environmental conservation shall make or have made examinations of samples secured under this section to determine whether or not a provision of the commissioner's respective portions of this chapter is being violated.

(c) The commissioner of health and social services has the same powers and duties with respect to drugs and devices as the commissioner of environmental conservation has with respect to food and cosmetics under (a) and (b) of this section. (§ 22 ch 129 S.L.A. 1949; am § 1 ch 80 S.L.A. 1957; am Executive Order No. 51, § 21 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation" following "the commissioner" and deleted "drugs, devices" following "food" twice in the introductory language of subsection (a). Also in subsection (a), the amendment added "of his respective portions" following "of the provisions" in paragraph (1) and deleted "drug, device" following "food" in paragraph (2). In subsection (b), the amendment added "of environmental conservation" following

"commissioner" and added "of his respective portions" following "not a provision". The amendment also added subsection (c).

Collateral references. — Validity of inspection conducted under provisions of Federal Food, Drug, and Cosmetic Act (21 USC § 374(a)) authorizing FDA inspectors to enter and inspect food, drug or cosmetic factory, warehouse, or other establishment, 18 A.L.R. 2d 734.

Sec. 17.20.210. Reimbursement for expenses. The Department of Environmental Conservation and the Department of Health and Social Services may make expenditures from money appropriated for the administration of their respective portions of this chapter to reimburse authorized employees or agents for amounts expended without receipt, covering purchases or services obtained in securing evidence of a violation of their respective portions of this chapter, upon vouchers certified by the disbursing and certifying officers of the appropriate department. Disbursement shall not exceed \$800 in any biennium. (§ 22 ch 129 S.L.A. 1949; am § 1 ch 80 S.L.A. 1957; am Executive Order No. 51, § 22 (1981))

Effect of amendments. — The 1981 amendment substituted "Department of Environmental Conservation and the Department of Health and Social Services" for "department" near the beginning of the

first sentence, added "their respective portions of" preceding "this chapter" twice in the first sentence and added "appropriate" preceding "department" near the end of the first sentence.

Sec. 17.20.220. Publication of reports and information. (a) The commissioner of environmental conservation and the commissioner of health and social services may have published from time to time reports summarizing judgments, decrees, and court orders which have been rendered under their respective portions of this chapter, including the nature of the charge and the disposition of it.

(b) The commissioner of environmental conservation may have disseminated information regarding food and cosmetics which the commissioner considers necessary in the interest of public health and the protection of the consumer against fraud. This section does not prohibit the commissioner from collecting, reporting, and illustrating the results of the commissioner's investigations.

(c) The commissioner of health and social services has the same power with respect to drugs and devices as the commissioner of environmental conservation has with respect to food and cosmetics under (b) of this section. (§ 23 ch 129 S.L.A. 1949; am Executive Order No. 51, § 23 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation and the commissioner of health and social services" following "the commissioner" and added "their respective portions" following "rendered under" in

subsection (a). The amendment also added "of environmental conservation" following "commissioner" and deleted "drugs, devices" following "regarding food" in subsection (b) and added subsection (c).

Sec. 17.20.230. Detention or embargo of goods. (a) Whenever the commissioner of environmental conservation finds or has probable cause to believe that a food or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, the commissioner shall affix to it a tag or other appropriate marking, giving notice that it is or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of it by sale or otherwise until permission for removal or disposal is given by the commissioner or the court. A person may not remove or dispose of a detained or embargoed article by sale or otherwise without this permission.

(b) The commissioner of health and social services has the same duty with respect to drugs and devices as the commissioner of environmental conservation has with respect to food and cosmetics under (a) of this section. (§ 6(a) ch 129 S.L.A. 1949; am Executive Order No. 51, § 24 (1981))

Effect of amendments. — The 1981 amendment designated the existing section as subsection (a) and added subsection (b). In subsection (a), the amendment

added "of environmental conservation" following "the commissioner" and deleted "drug, device" following "food" in the first sentence.

NOTES TO DECISIONS

Cited in State, Comm'r of Dept of Health & Social Servs. v. Seward Marine Serv., Inc., Sup Ct. Op. No. 2113 (File No. 2113), 612 P.2d 1010 (1980).

Sec. 17.20.240. Petition for libel for condemnation. When an article is detained or embargoed under AS 17.20.230 it has been found by the commissioner of environmental conservation or the commissioner

of health and social services, as the case may be, to be adulterated or misbranded, the appropriate commissioner shall petition the superior court for a libel for condemnation of the article. When that commissioner finds that a detained or embargoed article is not adulterated or misbranded, the commissioner shall remove the tag or other marking. (§ 6(b) ch 129 SLA 1949; am Executive Order No. 51, § 25 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be" preceding "to be adulterated" in the first sentence and substituted "that" for "the" preceding "commissioner" in the second sentence.

Sec. 17.20.250. Destruction of adulterated or misbranded goods. If the superior court finds that a detained or embargoed article is adulterated or misbranded, it shall, after entry of the decree, be destroyed at the expense of the claimant, under the supervision of the commissioner of environmental conservation or the commissioner of health and social services, as the case may be. Court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article. (§ 6(c) ch 129 SLA 1949, am Executive Order No. 51, § 26 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be" at the end of the first sentence.

Sec. 17.20.260. Exemption from destruction. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, and after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be properly labeled or processed has been executed, the court may order that the article be delivered to the claimant for labeling or processing under the supervision of the commissioner of environmental conservation or the commissioner of health and social services, as the case may be. The claimant shall pay the expense of supervision. The bond shall be returned to the claimant of the article on representation to the court by the appropriate commissioner that the article is no longer in violation of this chapter, and that the expenses of supervision have been paid. (§ 6(c) ch 129 SLA 1949; am Executive Order No. 51, § 27 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be" following "the commissioner" near the end of the first sentence and added "appropriate" preceding "commissioner" in the third sentence.

Sec. 17.20.270. Immediate destruction of contaminated food. Meat, seafood, poultry, vegetable, fruit, or other perishable article in

any room, building, vehicle of transportation or other structure which is unsound, or contains filthy, decomposed, or putrid substance, or a substance that may be poisonous or deleterious to health or otherwise unsafe, is a nuisance. Whenever the commissioner of environmental conservation finds such an article, the commissioner shall immediately condemn or destroy it or in any other manner render it unsalable as human food. (§ 6(d) ch 129 SLA 1949; am Executive Order No. 51, § 28 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation" following "the commissioner" in the second sentence.

Sec. 17.20.280. Injunction proceedings. The commissioner of environmental conservation and the commissioner of health and social services may apply to the superior court for, and the court has jurisdiction to grant, a temporary or permanent injunction restraining a person from violating their respective portions of AS 17.20.290. (§ 4 ch 129 SLA 1949; am Executive Order No. 51, § 29 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation and the commissioner of health and social services" following "commissioner" and added "their respective portions of" following "person from violating."

Article 6. Prohibited Acts and Penalties.

Section	Section
290. Prohibited acts	320. Effect of written guaranty
300. Determination of misbranding, labeling or advertisement	330. Liability for dissemination of false advertising
310. Penalties	

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, § 40 et seq. 35 Am. Jur. 2d, Food, § 63 et seq., 74 et seq.

Sec. 17.20.290. Prohibited acts. (a) The following acts and the causing thereof are prohibited:

- (1) the manufacture, or sale, or delivery, holding, or offering of sale of food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) the adulteration or misbranding of food, drug, device or cosmetic;
- (3) the receipt in commerce of food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of them for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of an article in violation of AS 17.20.050, 17.20.070 and 17.20.100,

(5) the dissemination of a false advertisement;

(6) the refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by AS 17.20.200;

(7) the giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state from whom the person who relied on the guaranty or undertaking received the food, drug, device, or cosmetic in good faith;

(8) the removal or disposal of a detained or embargoed article in violation of AS 17.20.230 — 17.20.270;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being misbranded;

(10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using a mark, stamp, tag, label or other identification device authorized or required by regulations adopted under AS 17.20.230 — 17.20.270;

(11) the using, on the labeling of a drug or in an advertisement relating to a drug, of a representation or suggestion that an application with respect to the drug is effective under AS 17.20.110 or that the drug complies with the provisions of that section;

(12) the sale or offering for sale of frozen fish as fresh fish;

(13) the improper labeling and drug substitution by pharmacists under AS 17.20.405.

(b) The commissioner of environmental conservation or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves food or cosmetics, and the provisions of paragraph (a)(12) of this section. This subsection does not limit the authority of peace officers.

(c) The commissioner of health and social services or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves drugs or devices, and the provisions of paragraphs (a)(5), (11), and (13) of this section. This subsection does not limit the authority of peace officers. (S 3 ch 129 S.L.A. 1949; am § 1 ch 149 S.L.A. 1967; am § 2 ch 17 S.L.A. 1971; am Executive Order No. 61, § 30 (1981))

Cross references. For adulteration of food and its sale, see AS 17.05.020. *Effect of amendments.* — The 1981 amendment added subsections (b) and (c).

See. 17.20.300. Determination of misleading labeling or advertisement. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false

because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account among other things representations made or suggested by statement, word, design, device, sound or combination of them, and the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under customary or usual conditions of use. (S 201 ch 129 S.L.A. 1949)

Collateral references. — Products liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger to use of vaccine or prescription drug, 14 ALICD 718. Promotional efforts directed towards prescribing physician as affecting pro-

scription drug manufacturer's liability for product-caused injury, 91 ALICD 1080.

What constitutes "false advertising" of food producer cosmetics within 11 b and 12 of the Federal Trade Commission Act. (15 DRS'S 41 45, 52), 50 ALR Fed. 16

See. 17.20.310. Penalties. A person who violates the provisions of AS 17.20.290, upon conviction, is punishable by imprisonment for not more than six months, or by a fine of not more than \$500, or by both. If the violation is committed after a conviction under this section has become final, the person is punishable by imprisonment for not more than one year, or by a fine of not more than \$500, or by both. (S 51a) ch 129 S.L.A. 1949)

See. 17.20.320. Effect of written guaranty. A person is not subject to the penalties of AS 17.20.310 for having violated AS 17.20.290(1) or (3) if that person establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state from whom the article was received in good faith, to the effect that it is not adulterated or misbranded within the meaning of this chapter. (S 51c) ch 129 S.L.A. 1949)

See. 17.20.330. Liability for dissemination of false advertising. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is liable under AS 17.20.310 for the dissemination of the false advertisement, unless the publisher, licensee, agency or medium has refused the request of the commissioner of health and social services to furnish the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state who caused dissemination of the advertisement. (S 51c) ch 129 S.L.A. 1949; am Executive Order No. 51, § 31 (1981))

Effect of amendments. — The 1981 amendment deleted "in" preceding "the request of," added "of health and social services" following "the request of the commissioner" and deleted "the commissioner" preceding "the name and

post office address"

Collateral references. — What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act (16 USC §§ 15, 52), 50 ALR Fed. 10

Article 7. General Provisions.

Section	Section
340. Scope of provisions dealing with sale	370. Definitions
350. Report of minor violations	380. Short title
360. Hearing before report of criminal violation	

Sec. 17.20.340. Scope of provisions dealing with sale. The provisions of this chapter regarding the sale of food, drugs, devices, or cosmetics include the manufacture, production, processing, packing, exposure, offer, possession, and holding of them for sale; the sale, dispensing, and giving of them, and the supplying or applying of them in the conduct of a food, drug, or cosmetic establishment. (S 2q) ch 129 SLA 1989

Sec. 17.20.350. Report of minor violations. Nothing in this chapter requires either the commissioner of environmental conservation or the commissioner of health and social services, as the case may be, to report minor violations of their respective portions of this chapter for prosecution, or for the institution of libel or injunction proceedings, when that commissioner believes that the public interest will be adequately served by a suitable written notice or warning. (S 8 ch 129 SLA 1989, am Executive Order No. 51, § 32 (1981))

Effect of amendments. — The 1981 amendment added "other" following "chapter requires," added "of environmental conservation or the commissioner of health and social services, as the case may

be" following "the commissioner," added "of their respective portions" following "report minor violations" and substituted "that" for "the" preceding "commissioner believes that."

Sec. 17.20.360. Hearing before report of criminal violation. The attorney general, to whom the commissioner of environmental conservation or the commissioner of health and social services, as the case may be, reports a violation of this chapter, shall institute appropriate proceedings in the superior court without delay and prosecute them in the manner required by law. Before a violation of this chapter is reported to the attorney general, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to respond to the appropriate commissioner, orally or in writing, in person or by attorney, with regard to the contemplated proceeding. (S 7 ch 129 SLA 1989, am Executive Order No. 51, § 3 (1981))

Effect of amendments. — The 1981 amendment added "of environmental conservation or the commissioner of health and social services, as the case may be"

following "commissioner" in the first sentence and added "appropriate" preceding "commissioner" in the second sentence.

Sec. 17.20.370. Definitions. In this chapter

(1) "advertisement" means a representation disseminated, other than by labeling, for the purpose of inducing, or which is likely to induce directly or indirectly the purchase of food, drugs, devices or cosmetics;

(2) "antiseptic", in the labeling or advertisement of a drug, is a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

(3) "contaminated with filth" means food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as necessary by all reasonable means, from foreign or injurious contamination;

(4) "cosmetic" means an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance, and an article intended for use as a component of an article enumerated in this paragraph; except that the term does not include soap intended for cleansing purposes only;

(5) "device" except when used in AS 17.20.040(6), 17.20.090(3), 17.20.150(3), 17.20.290(10) and 17.20.300 means an instrument, apparatus, and contrivance, including its components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; or to affect the structure or function of the body of man or animal;

(6) "drug" means an article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary; an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; an article other than food, intended to affect the structure or function of the body of man or animal; and an article intended for use as component of an article specified in this paragraph but does not include devices or their components, parts, or accessories;

(7) "federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 — 392; 62 Stat. 1010 — 1059;

(8) "food" means an article used for food or drink for man or animal, chewing gum, and articles used for components of either of them;

(9) "immediate container" does not include a package liner;

(10) "label" means a display of written, printed or graphic matter upon the immediate container of an article, however, a statement made by or under authority of this chapter that a word, statement, or other information appear on the label is not complied with unless the

word, statement, or other information also appears on the outside container or wrapper of the retail package, if there is one, or is easily legible through the outside container or wrapper;

(11) "labeling" means the label and other written, printed or graphic matter upon an article or its container or wrapper accompanying the article;

(12) "new drug" means a drug the composition of which is such that it is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling of it; or a drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in these investigations, been used to a material extent or for a material time under those conditions;

(13) "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or supplements to them. (§ 2(a) — (k) (m) — (p) (r) ch 129 S.L.A. 1914; am § 6 ch 101 S.L.A. 1971; am § 14 ch 208 S.L.A. 1975; am Executive Order No. 51, § 41 (1981))

Revisor's notes. — This section was reorganized in 1983 to alphabetize the words defined.

Effect of amendments. — The 1981 amendment repealed former definitions of

"commissioner" and "department."

Collateral references. — Marijuana, psilocybin, psycate or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1164.

Sec. 17.20.380. Short title. This chapter may be cited as the Alaska Food, Drug and Cosmetic Act. (§ 1 ch 129 S.L.A. 1949)

Chapter 30. Controlled Substances.

Article

1. Regulation of Manufacture, Distribution, Prescription and Dispensing of Controlled Substances (§ 17.30.010 — 17.30.020)
2. Enforcement, Enforcement and Review Provisions (§ 17.30.100 — 17.30.130)
3. Education and Research (§ 17.30.140)
4. General Provisions (§ 17.30.150 — 17.30.160)

Cross references. — For transitional provisions, see sec. 23, ch. 45, S.L.A. 1982 in the Temporary and Special Acts; for declaration of legislative purpose, see sec. 1, ch. 45, S.L.A. 1982 in the Temporary and Special Acts.

Collateral references. — 28 C.F.R.,

Drugs and Narcotics Supplement, § 1 et seq.

Construction or provision of Uniform Narcotic Drug Act or similar statute dealing with obtaining or procuring the administration of a narcotic drug by fraud or deceit, 25 A.L.R.3d 1118.

Article 1. Regulation of Manufacture, Distribution, Prescription, and Dispensing of Controlled Substances.

Section

10. Regulations
20. Registration requirements
30. Registration
40. Denial, revocation, and suspension of registration
50. Order to show cause

Section

60. Records of registrants
70. Order forms; prescriptions
80. Unlawful administration, prescription and dispensation of controlled substances

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, §§ 7 et seq., 28 et seq.

Sec. 17.30.010. Regulations. (a) The Board of Pharmacy shall adopt regulations under the Administrative Procedure Act (AS 44.02) which are necessary for the administration of this chapter, and may charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as authorized by federal law in the state.

(b) Regulations adopted under this chapter by the board shall be patterned after federal law so that the legitimate manufacture, distribution, and dispensing of controlled substances is subject to regulations regarding registration, record keeping, order forms and prescription requirements that are identical to those required by federal law or regulations. (§ 4 ch 45 S.L.A. 1982)

Cross references. — For penalty for furnishing false or fraudulent information in or omitting material information from any application, report, record, or other document required to be kept or filed under this chapter, see AS 11.71.040(a)(8). For penalty for failure to make, keep, or furnish any record, notification, order form, statement, notice, or information required under this chapter, see AS 11.71.050(a)(4).

Editor's notes. — Section 21, ch. 46, S.L.A. 1982 provides "Orders issued and regulations adopted under a law amended or repealed by this Act and in effect on January 1, 1983, and not in conflict with this Act continue until amended or repealed."

Sec. 17.30.020. Registration requirements. (a) A person who manufactures, distributes, dispenses, or conducts research with a controlled substance in the state or who proposes to manufacture, distribute, or dispense a controlled substance in the state, shall register annually with the board in accordance with regulations adopted under AS 17.30.010.

465-3600

June 30, 1980

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: SCS CSNB 686 am S
(limiting liability of
donors of food)
Our File: J-88-146-80

Dear Governor Hammond:

This office has reviewed SCS CSNB 686 am S, the principal thrust of which relieves a person donating food to a nonprofit organization of any civil or criminal liability flowing from any adulteration or misbranding of the food, unless the alteration is the result of intentional or grossly negligent conduct on the part of the donor.

"Grossly negligent conduct" is defined as "the intentional failure to perform a duty with reckless disregard of consequences that affect the life or property of another." (The legislature forgot the comma after "duty," thus changing the literal meaning, but we assume that we know what was intended.) A donee may ask the commissioner of health and social services to inspect the food to determine if it is adulterated or misbranded.

The commissioner may delegate this inspection duty, and a broad range of other enforcement and inspection duties, to the Department of Environmental Conservation.

This bill is apparently well intentioned; it is designed to encourage the donation of food to nonprofit

organizations for their use or distribution--presumably to needy persons. However, it exacts too great a price from prospective donees as a reward for the eleemosynary conduct.

The bill's failure to distinguish between donors who are manufacturers, packers, or bottlers and those who are not is, we think, a fatal flaw. It is a well-established principle of law that manufacturers, bottlers, and packers are liable for damages resulting from a failure to exercise that degree of care required to insure that the product is fit for use and is free from taint. See 32A C.J.S. Food, sections 59-60. This bill would relieve those manufacturers from liability for negligence for illness caused by unfit food when they give away rather than sell their products. While it is admirable to encourage the donation of food to needy causes, it is unwise to eliminate the ordinary standard of care and its attendant liability. We can, for example, imagine a manufacturer whose warehouse is laden with food of marginal fitness who would like to donate it for a tax deduction. We do not think it proper to eliminate this person's liability for negligence should one of the donees become ill from adulterated or unfit food. Poor people receiving donated food should have no less protection than people who buy food from the donor.

The class of persons who manufacture food should be held to a uniform standard of care regardless of whether the food is sold or given away. To do otherwise would be to encourage socially irresponsible conduct disguised as beneficent bounty. We would suggest that you veto this bill.

Sincerely,

Wilson L. Condon
Attorney General

WLC:m1:MRL

GARY C. NEWMAN
S.R. BOX 51233
FAIRBANKS, ALASKA 99701

12 5 70 10 40

January 23, 1984

House RESS Committee

I am in support of House Bill 496, relating to food banks.

This bill would remove the impediment of liability from the donation by food vendors of surplus or waste food. By doing so, it would allow the use of tons of food for human or animal consumption that is presently being destroyed by the vendors.

For one who has had animals such as pigs, chickens and cows, this bill would allow them to have the waste that is presently thrown away by food vendors. At present, the vendors won't give away food which is waste by their standards even for animal use because there is the chance that the food would really be used for human consumption and they are concerned about the liability question, as I stated earlier.

While this issue may affect only a small proportion of our state's population, it would allow the use of tons of resources that are expensively imported into our state for use for something other than landfill.

I urge your support of this bill.

Gary C. Newman



FOOD BANK OF ALASKA

P.O. Box 3324, Anchorage, AK 99510
1025 Orca Street, # N8, Anchorage
907-276-4776

January 5, 1984



Dear Friends :

The holidays are over and we have all of you to thank for your support during the 1983 year. It has been a very good year for the Food Bank. I can't give all the details on this short letter, but I will be glad to do so at the Annual Meeting Friday, February 3rd, 1984 at 6:30 pm. The First Christian Church at 3031 LaTouche street will host the meeting. It will begin with dinner. The public is invited to share in the report of 1983 activities. Please phone the Food Bank, 276-4776, with your reservations. Donation for the dinner will be \$7.50. Ballots will be mailed to all individuals that have donated \$10.00 to the Food Bank and all Agencies that have donated \$25.00 during 1983.

The Bureau of Land Management recently had a canned food drive with interdepartmental competition. The total poundage donated to the Food Bank was a shade under 500 lbs. That makes it the largest single food drive in recent history! Thanks to all the employees of the BLM.

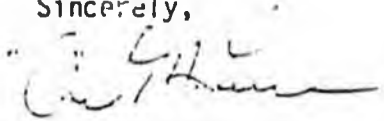
The Food Bank has finally bought a Kerosun Heater!! No more freezing in the office for the volunteers or staff. We still need a nice, well running 4X4 to pick up the overflow for the High Cube van. If any one knows of a bargain let us know. (Or if you know of someone who would be willing to donate one)

In the last newsletter I let it be known that we needed snow tires. Well the plea did not go unheard. I would like to thank the Salvation Army for donating two studded tires and the Firestone store on Post Rd for donating three tires and mounting. The Firestone donation was arranged by Allen Bentson of Alaska Sales and Service. Thank you Allen, Salvation Army and Firestone.

The Food Bank is having an activity called "Can Skate" if you can skate then come to the Anchorage Roller Rink on January 24, 1984 with two cans of food and you can skate for free! This has been arranged in cooperation with Mark Dade of the Anchorage Roller Rink. We are hoping for a very good turnout. If you can't skate you can drop off donations there on the 24th anyway.

I hope to see each of you at the annual meeting and at the skating rink. I thank each and everyone of you for your support during the 1983 year and look forward to your continued support.

Sincerely,


Carl M. Larsen
General Manager

p.s. please RSVP by January 31 for the Annual Meeting.

"Cache and Share / Don't Waste Food"

First Reading

Gleaners fight hunger, salvage food in 11 states

In produce fields and fruit groves scattered across America, hard-pressed Americans are increasingly using a concept as old as the Bible to fight hunger. It is gleaning, the salvaging of food that otherwise would rot in the fields, whether inadvertently left behind or discarded because of blemishes, bruises, or low prices.

Gleaners are gathering some of that food through privately organized efforts in at least 11 states: Arizona, California, Colorado, Florida, Kansas, Maryland, Michigan, Missouri, Oregon, Texas, and Washington. They help fill what Congress' General Accounting Office calls "an unmet need" for food assistance among those not qualifying for government food programs, and GAO says states can help increase the amount of gleaned food.

California and Oregon, for example, give state tax deductions to farmers for the value of food gleaned from their fields. First passed in 1977, California's A.B. 120 this year was extended through 1984.

"It's an incentive for churches and other groups to go out and get the produce and say to a store or grower that he can get a tax deduction," says California Assemblyman David Kelly, who sponsored the renewal. Stores and growers can claim a charitable deduction — in addition to the business expense — for the value of gleaned or discarded food. A study is underway to determine the amount of lost taxes on such food.

In addition, the Food Marketing Institute says that 34 states have passed "Good Samaritan" laws limiting the liability of food donors. Ohio's is illustrative: "No person who in good faith donates perishable food to an agency is liable in civil damages for injury, death, or loss to persons or property that arises because that perishable food . . . is not fit for human consumption," if the food was

reasonably considered safe at the time it was donated.

Tax deductions and Good Samaritan laws, the GAO said, are "positively affecting the amount of food being donated."

Gleaning takes its cue from Leviticus 19:9-10: "When you harvest the produce of your field, do not completely mow the edge of your field or gather the gleanings of your harvest . . . leave them for the poor." Today food is also gleaned from supermarket waste.

Gleaners are the needy or volunteers gathering food for others. The needy keep what they can use with the excess going to such places as food banks. "It's not a freebie program — you work for what you get," says Judi Amos, of Everett, Wash., who has labored as a gleaner among potatoes and peaches.

"The program's really helped out my budget," adds Rachel Brown, who supports three children on welfare and food stamps. After years of dependence on others, she says with pride, "I'm helping myself and helping others."

—Bill Curry



Los Angeles Times photo by Bob Greiser

GLEANING HARVEST — Rachel Brown and her nephew, Anthony Miller, stand next to boxes of pears and vegetables that were her share for a day's work of gleaning in Washington state.

In-state preference laws enacted to govern public contract awards

One sidelight of the recession is that several legislatures are worried about state and local government contracts being awarded to out-of-state firms. As a consequence, at least 21 legislatures have enacted in-state preference laws.

The "Buy Minnesota" law passed last May, for example, has received nationwide publicity reflecting the generic pros and cons of implementing such protectionist legislation. (These laws differ from "Buy American" laws requiring the purchase of American-made goods and services over those from foreign countries — which don't

specify whether they must come from in-state firms.)

According to the author of the Minnesota legislation, State Representative Pat Beard, the law was intended to improve in-state employment and thus increase state tax revenues.

Beard found that 13 other states exercise in-state preference laws that include a 2-15 percent break in bidding on public works jobs against out-of-state contractors. States exercising preference are Alaska, Arizona, Arkansas, Hawaii, Louisiana, Maine, Montana, New Mexico, Oklahoma, South Carolina, Washington, West

Virginia, and Wyoming. Among them, the preference law may apply only to state agencies or extend also to municipalities and school districts.

The Minnesota law includes a provision that says any contract awarded by a state agency for engineering services, erection, construction, alteration or repair of any public building or structure, or for any public work improvement, when competitive bidding is not required, must be awarded to a Minnesota resident.

"If competitive bidding is required by law," the statute continues, "the contract must be

House H.E.S.S.

Re: H.B. 496 - Food Banks

from Rep. Niilo Koponen

Waste not, want not

WASHINGTON, DC

How are America's poor to eat when their unemployment pay runs out, or when they can no longer make do on food stamps and welfare? The recession has provided an answer: a jerry-built, but enviably efficient, system of emergency food centres. This network stretches across the nation, using food that would otherwise go to waste, and shunts it quickly and in large quantities from grower or manufacturer to the various centres that feed the hungry. It is a charitable operation which employs only a few hundred people and is completely decentralised. It has grown with such speed that it has already left the agriculture department's much criticised surplus commodity programme, ensconced in red tape, far behind.

The emergency food system has its origins in the soup kitchens of the depression and before, but its growth in the past few years has been startling. Although all involved would like to consider it a temporary institution, there is a growing belief that it is here to stay and, if anything, will grow much larger.

Sixty-one regional food banks are the system's backbone. Each consists of a large warehouse equipped with freezers and usually manned by a small, paid staff supplemented by volunteers. These food banks are connected through Second Harvest, a non-profit-seeking organisation, which acts as a food broker. From its base in Phoenix, Arizona, Second Harvest approaches farmers and food manufacturers for donations and then shunts this food through three regional offices out to its members. The member food banks, either individually or through pools, pay the cost of transport, which is also sometimes donated. Once the food reaches a food bank, it is then given out to hundreds of the bank's members: churches, day centres for infants and the elderly, soup kitchens and various other organisations.

The member groups, which would previously have bought food on the open market, now support their food bank by paying a tax of between five and 12.5 cents a pound for the food they take. In this way the budget of the food bank,

usually running anywhere from \$100,000-250,000 a year, is covered. In some instances food banks are paid for by small donations. In Oklahoma, 600 people send in cheques of from \$5 to \$25 a month to keep the major local food banks going.

The entire system is private and non-profit seeking. To make sure it stays that way for tax purposes, Second Harvest certifies its member banks, inspects their operations, ensures that they charge no



No shortage of takers

more than 12.5 cents a pound in taxes, and satisfies itself that the bank members in turn are charitable organisations as defined under the tax laws.

Second Harvest began as an experimental arm of the now defunct Community Services Administration in the Carter era. Last year it handled 60m lb of food. This year the volume is expected to exceed 100m lb. Much of the food consists of products that would otherwise be thrown out by the manufacturer, not because they are bad, but because they cannot be sold for other reasons:

for example, discolouration or misspelled labels. When a Middle Eastern food broker went out of business, a trailer of macaroni with Arabic labelling was given to a food bank in New Jersey. Second Harvest dispensed 32 train carloads of a cereal which its manufacturer thought too oddly-flavoured to sell. The companies can deduct cost and half the unrealised profit from their taxes when they make such donations.

Some food banks rely heavily on farm surplus. In northern California, where there are five large food banks, the banks collaborate to find out what crops are in surplus and to carry out exchanges between different areas. The bank in Watsonville, for example, supplies tons of artichokes and lettuce and gets, in exchange, peaches from the bank in Santa Clara and tomatoes from the bank in Sacramento. Farmers give food that would otherwise go to waste. What is left in the fields after harvest is also, in many cases, gathered in by teams of volunteer gleaners who take their pickings to the banks for sorting, cleaning and packing.

A report by a research group in Washington noted a dramatic increase in people coming to programmes served by the food banks. More than half the 151 programmes surveyed said that provision of free meals or food baskets had increased by more than half between February, 1982, and February, 1983. The Community Food Bank of New Jersey in Newark provides a good indication of the trend. Last autumn the bank was handling 10,000 lb of food a month. Now it distributes 200,000 lb a month across the state to 300 different groups which provide food to 30,000 people every day.

Some food banks in the Second Harvest system also distribute federal surplus foods under the government's programme. For the most part these consist of butter, cheese and non-fat dry milk from the government's huge surplus. But some food banks refuse to handle federal foods on the ground that it involves too much paper work. In certain states food banks say they have been deliberately denied federal food shipments, which instead have been handed out through local politicians as patronage.

Salvation Army aims to replenish dwindling food bank

by Chriss Swancy
Times Writer

4/20/94



DAVID CLITHEROE
'We don't turn anyone away'

When a boxer goes down for the 10 count, he usually gets saved by the gong or the referee. That's not the case, however, for the emergency food bank at the Salvation Army's McKinnell House.

The food bank is going down for a 10 count and Salvation Army officials say they don't have the money to revive it.

"We're in bad shape. Our food supplies are so low now that we're trying to decide how long we can stretch things out," said Capt. David Clitheroe, director of social services.

Clitheroe said dwindling emergency food supplies are the result of a 51 percent increase in walk-in clients in the past three years and a 37 percent decrease in food funding.

Normally, the Salvation Army spends \$90,000 on its emergency food program. But inflation and an increased number of needy families in Anchorage have whittled funds to \$50,000.

Because of the decreases, the normal three-day food box which includes nine meals for a family of four has been cut back to a one-day box of food. There are also serious shortages in

meat, dairy products and canned goods.

"These are things we generally try to supply needy families with," Clitheroe said. The flood of needy families has been so great that the Army's food policy of assisting families once every 90 days is frequently extended. "We don't turn anyone away," Clitheroe said. The cost of feeding people has also risen from \$7.14 per person in 1982 to \$10.50 per person in 1984.

McKinnell House, a short-term shelter for families and an emergency food repository located at 546 E 15th Ave., is operated by the Salvation Army Emergency Services Program. It served more than 9,000 people last year.

"We expect to see even more people this year. But I'm worried about how we can adequately help them," Clitheroe said.

He attributes the massive influx of needy families to three overriding problems: the shaky economy, tighter food stamp regulations and increased migration of younger families to Anchorage.

"Many are still coming to find the great American dream. But once they get here, they're finding the job situation is tight," Clitheroe said.

Take the Bearfield family of Juneau, for example. They came to Anchorage for a better way of life. But they ended up standing in food stamp lines and filling out yards of eligibility forms.

"We applied for food stamps Dec. 5 but didn't get any until February. If it hadn't been for the Salvation Army emergency food program my family would have starved," Bearfield said. The Bearfields have three children: Pamela, 3, Christina, 5, and Wanda, 14.

"We waited months before we got any permanent help," Bearfield said.

For some families, Clitheroe said, the food stamp vigil continues. The Meyer family, who still relies heavily on the Salvation Army emergency food program, applied for food stamps March 8. "We still haven't received any yet," said Sandy Meyer.

"We're living on navy bean soup and the generosity of the Salvation Army," she said. The Meyer family has two children: Brandi, 1, and Marie, 3.

Salvation Army officials claim current overloads are due in part to the lengthy and complex food stamp application process. Legally, the state can spend up to 30 days verifying need.

Jan Hanson, regional manager for

southcentral division of public assistance, said applications for food stamps are up. "We're seeing more applications because building starts are down and the fishing industry has been unpredictable for the past two seasons," she said.

Hanson also said that there seems to be a misunderstanding about the entire food stamp program. "We're not an emergency relief service. We are committed to giving long-term assistance. That's why we send people to emergency shelters like McKinnell House," Hanson said.

The overload at McKinnell House is only the tip of the iceberg. Other emergency food providers like St. Francis House at 817 W. Sixth Ave. and Bean's Cafe at 425 1/2 E. Fifth Ave. are seeing more needy people as a result of the already overworked Salvation Army emergency food program.

"I have drawers full of referrals. The only immediate answer is to cut back services. I hope we never get to the point where we can't help at all. Hunger and homelessness in America have reached epidemic levels," Clitheroe said.

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(7)

1/9/84

Date: 2-8-84

Mr. Speaker: HEALTH, EDUCATION AND SOCIAL SERVICES

The Committee on has had HB 496

"An Act relating to food banks."

under consideration and reports it back as follows:

- [] do pass [] do not pass
[] do pass with attached amendments(s)
[X] replace with CS for HB 496 (HESS) [X] same title [] new title
and recommends
[] AND attaches a "Letter of Intent" [] New Fiscal Note
[] reports it back without recommendation
[] referred to the Committee

MEMBERS SIGNING DO PASS

Handwritten signatures: MacLuskie, Terry Martin, Keith Uehly, Sam Pestinger, Arlo Koppen, Mike Davis

MEMBERS HAVING OTHER RECOMMENDATIONS:

Blank lines for other recommendations

MacLuskie CHAIRMAN

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
January 28, 1984
10:15 a.m.

Members Present: Rep. Tischer, Chairman
Rep. M.W. Miller, Vice-Chair
Rep. Martin
Rep. Uehling
Rep. Goll
Rep. Koponen
Rep. Davis

Members Absent: None.

COMMITTEE CALENDAR

HB 496 "An Act relating to food banks".
HB 32 "An Act making a special appropriation to the University of Alaska for construction of dormitories at the Anchorage Campus; and providing for an effective date."
HB 514 "An Act relating to the regulation of private schools".
CSSB 354 (Jud) am "An Act relating to the regulation of private schools".

WITNESS REGISTER

Carl Larson
General Manager
Food Bank of Alaska
Juneau, Alaska 99801
Position Statement: In support of HB 496.

Gary Newman
Fairbanks, Alaska
Position Statement: Suggested changes in HB 496.

Barbara Smith
FISH Organization
Anchorage, Alaska
Position Statement: In favor of HB 496.

Connie Wallace
Executive Director
Fairbanks Food Bank
Fairbanks, Alaska
Position Statement: Noted concerns with some of the language in

HB 496.

Barbara Burke
Abused and Aide Shelter
Anchorage, Alaska
Position Statement: In support of HB 496.

Bill Barker
Bean's Cafe
Anchorage, Alaska
Position Statement: Didn't state position on HB 496.

Michael McQuinn
Student
University of Alaska, Anchorage
Position Statement: In favor of HB 32.

David Alcott
Chancellor
University of Alaska, Anchorage
Position Statement: In favor of HB 32.

Ed Bickerstaff
Chancellor
University of Alaska, Anchorage
Position Statement: In support of HB 32.

Roger Wordsley
Student Services
Anchorage Community College
Position Statement: In support of HB 32.

Sandy Berkie
Student
ACC/UAA
Position Statement: Urged passage of HB 32.

Bob Baldwin
Chairman
UAA Citizen's Advisory Committee
Position Statement: In support of HB 32.

Carol Lund
Director of Student Activities
Position Statement: Urged passage of HB 32.

Harry Nichols
Dean of Students
UAA
Position Statement: Supports HB 32.

Lee Pickard
Campus Affairs
UAA

Position Statement: In support of HB 32.

John Herring
Student
UAA

Position Statement: Urged passage of HB 32.

Ramona Suetopka-Duerre
President
Alaska Native Education Association
Position Statement: Strongly supports HB 32.

John O'Shea
UAA Alumni Association
Position Statement: Representing Alumni Association, he urged
passage of HB 32.

Mary M. Wilson
Montessori Creative Training Center
1422 O Street
Anchorage, Alaska 99501
276-2971
Position Statement: Supports HB 514.

Fae Scott
Secretary to Ms. Green
Tom Thumb Montessori School
1831 Bunker
Anchorage, Alaska 99503
Position Statement: Supports HB 514 without amendments.

Safiyyah Shaheed
Montessori School
1224 Richardson Vista
#350
Anchorage, Alaska
279-1247
Position Statement: Supports HB 514 without amendments.

Katherine Miller
Tom Thumb Montessori
5915 Doncaster Dr.
Anchorage, Alaska
337-5006
Position Statement: In favor of HB 514.

Margaret Green
Director
Tom Thumb Montessori
1901 Spenard Drive
Anchorage, Alaska 99503
Position Statement: Supports HB 514.

Harry Bates

SR 2, Box 4110
Chugiak, Alaska
688-2242
Position Statement: In favor of CSHB 514.

Mac Culver
Hillcrest Christian School
SR 3 Box 5946
Chugiak, Alaska
688-3813
Position Statement: In favor of CSHB 514.

Burt Carney
P.O. Box 10-1779
Anchorage, Alaska
Position Statement: Supports SB 354, concerned with CS.

Daniel Glover
Church Christian Harvester
9109 Brayton Drive
344-2244
Position Statement: Supports SB 354.

Kalen Saxton
Position Statement: Supports HB 354.

Mary Beth Juday
Position Statement: In favor of CSSB 354.

Tim Ewell
Position Statement: In support of SB 352.

Joan Hurst
Position Statement: Opposed HB 354 and SB 352.

Sister Eileen Brown
Fairbanks, Alaska
Position Statement: Questioned language in HB 354.

Patty Meritt
Position Statement: Opposes both HB 354 and SB 352.

Doug Schmedlen
Position Statement: Favored HB 514.

Lloyd Bellamy
Position Statement: In support of CSSR 354.

Edwin Rinner
Position Statement: In support of CSSB 354.

Jerry Wainscott
Position Statement: Urged passage of CSSB 354.

Robert Alley
Position Statement: Supports CSSB 354.

Robert Byron
Position Statement: In support of CSSB 354.

Walt Arden
Abott Loop Christian Center
Position Statement: Supports CSSB 354.

PREVIOUS ACTION

HB 496 1/9/84 - First Reading.
Committee Referrals - HESS, Judiciary and Rules.
No previous action in HESS Committee.

HB 32 1/17/83 - First Reading.
Committee Referrals - HESS, Finance and Rules.
See HESS minutes of January 27, 1984.

HB 514 1/13/84 - First Reading.
Committee Referrals - HESS and Rules Committees.
See HESS minutes of January 23, 1984.

CSSB 354 (Jud) am 1/13/84 - First Reading on Senate Floor.
Committee Referrals - HESS, Judiciary and Rules Committees.
1/19/83 - See Senate Journal page 1798 for Judiciary Committee Report.
1/24/83 - See Senate Journal page 1835 for HESS Committee Report.
1/14/83 - See Senate Journal pages 1835, 1838 -1841 for Senate floor action.
1/24/84 - First Reading on House floor.
Committee referrals - HESS and Rules Committees.
No previous action in HESS Committee.

ACTION NARRATIVE

TAPE#1, Side A
Recording
Number 0001

Chairman Tischer called the meeting to order at 10:15 a.m., acknowledged members present and introduced HB 496 to the committee.

Number 0017

Rep. Koponen, sponsor of HB 496 comes to the stand to testify. He said the bill intended to exempt food banks and doners from liability. Alaska is one of three states without this legislation. Significant difference between this bill and similar legislation was vetoed by the 11th Legislature under Governor Hammond. This bill excludes commercial foods. This bill maintains standards for the food.

Number 0070

Rep. Koponen: We will be looking at changes in this bill which will provide restrictions.

Number 0080

Chairman Tischer: We ought to look at provisions which allow the giving away of food. Referred to example.

Number 0104

Chairman Tischer: I've seen folks dig in garbage behind retail grocers and pull out perfectly good food. Seems more humane to let them be given food out of back of a truck.

Number 0114

Rep. Koponen: I agree, it's a tremendous waste. We want to come up with a bill which will take care of this waste, but provide some standards for this food.

Number 0130

Rep. Koponen: Food banks are co-op ventures of Salvation Army and other groups. We want looser language which will permit easier distribution of food.

Number 0143

Chairman Tischer: Cited another example: Got from store food they were going to throw away. Can we provide this legality again?

Number 0166

Rep. Koponen: Stores discourage that because of liability. Different stores have different policies.

Number 0198

Carl Larson of Juneau, General Manager of Food Bank Alaska: Thanks for the chance to testify. Many organizations rely on food

banks and food donations for their food. This bill would help incentive to donate. People and commercial organization don't donate for fear of liability.

- Number 0250 Ward of Food Bank said he gives to organizations such as Bean's Cafe and it is tax deductible. These provisions deal with food from surplus.
- Number 0273 Rep. Larson: Trying to determine value of giving away hard to access.
- Number 0284 Rep. Ward: If I were a fisherman with extra fish; could I give them to food bank and deduct from taxes their full value?
- Number 0318 Chairman Tischer: How does your organization function? Are you paid?
- Number 0327 Carl Larson: Food bank started in 1979. We get "Request for Proposal" grants from the municipality, plus others. I get \$1400 a month and our driver gets \$7.50 an hour.
- Number 0412 Rep. Ward: How many people served last year?
- Number 0420 Mr. Larson: We estimated 6500.
- Number 0420 Rep. Ward: We aren't coordinating what we're trying to do.
- Number 0463 Mr. Larson: There are 10 different Salvation Army Programs, 8 different children's organization and others. We always try to recruit.
- Number 0468 Chairman Tischer: What criteria to get food from you?
- Tape 1, Side B
Recording
Number 0006 Gary Newman from Fairbanks: This bill will allow food to be given to animals too, rather than wasted. Suggested change; we need to be more specific in certain people's exclusion.
- Number 0045 Barbara Smith, Anchorage from FISH Organization: We're emergency food distribution agency staffed by volunteers. We receive food from food bank. We also distribute. We re-package some foods, so

we're concerned about our liability.

- Number 0092 Barbara Smith: We have been serving about 110 families per month. There is no means test, \$6,480 of meals per month. This month we have seen a great increase in number of needy families.
- Number 0124 Rep. Ward: Do you have a problem with people getting tax credit for donating?
- Number 0140 Barbara Smith: We encourage our doners to take a tax credit. There are two types: Food of marginal quality and food simply out of date.
- Number 0185 Chairman Tischer: It's incomprehensible for hungry person who receives free food to criticize that food. Maybe we ought to void responsibility of giver. Food receivers eat at their own risk.
- Number 0206 Barbara Smith: I think this bill addresses that. The bill makes it clear that the food bank makes every effort to provide sanitation for its food.
- Number 0242 Rep. Koponen: This bill was vetoed when we had our canned fish problem in Alaska. Canned food probably should not be included in this bill.
- Number 0254 Barbara Smith: We do not accept home canned food. We cannot trust it. We are careful.
- Number 0290 Connie Wallace, Executive Director of Fairbanks Food Bank: We work with several agencies and every church in town. People who need short-term help concern me. That's why we work with pastors.
- Number 0343 1976 Tax Reform Act addresses Rep. Ward's tax deduction question.
- Number 0363 Connie Wallace; about animal food. In Fairbanks we can use food for animals so that nothing goes to waste.
- Number 0424 Connie Wallace: botulism problem, we make use of city sanitarian. We have people who know lots about food handling. Urge change in excluding manufactures. This will need to be changed in next couple of years.

Tape 2, Side A
Recording
Number 0001

Rep. Ward: Enough salmon rot on beaches in Alaska to feed everyone in the state. Please comment.

Number 0015

Connie Wallace: I share your concern. Nationally, 137 million tons of food are wasted yearly. There's no reason for anyone in America to be hungry.

Number 0041

Chairman Tischer: In California, tons of oranges rot each year when there's a bumper crop to help the price up. Anything subsidized by government will do this.

Number 0055

Beverly Burke from Anchorage: Representing the Abuse, and Aid Shelter; \$1000 a month in for those people, 25% food from food bank. This bill is a good balance.

Number 0090

Bill Barker from Anchorage for Bean's Cafe: Bean's Cafe cooks for 200 people twice daily for street people of Anchorage. The main donator is the food bank.

Number 0120

Rep. Ward: There's no criteria for price on raw salmon. That's why so much waste. Can't get a tax deduction for giving fish away because of the lack of criteria.

Number 0141

Bill Barker: Bean's Cafe gets salmon from sport fishermen who empty last year's catch from freezer.

Number 0154

Rep. Davis: I'm a commercial fisherman. So much goes to waste because it rots so fast. Agree it is a waste, but how to solve is an answered question.

Number 0171

Chairman Tischer: It seems a simple matter to save this food for hungry people and save liability suits from flying everywhere, we should pass a bill like this.

Number 0204

Testimony on HB 496 concluded.

Number 0239

Chairman Tischer introduces HB 32 and welcomes all sites.

Number 0261

Rep. Furnace: We have obligation to provide student housing for Anchorage City College and University of Alaska, Anchorage. Long-standing agreement with campuses. This bill

calls for \$15 million on first come first serve basis.

Number 0293

Rep. Furnace: Let me repeat. We have an obligation and a long-standing agreement.

Number 0301

Rep. Ward: This bill is contrary to capital request budget which provides for Juneau campus housing. The design of dorms are very large.

Number 0316

Rep. Furnace: I hope message is clear to pass this legislation, lets not let this die because of quality of design.

Number 0348

Rep. Martin: Juneau housing is a gimmick to attract students to that campus. The Anchorage campus needs housing, it has for 11 years. We should be flexible on design. Priority is a question. I hope students will have input about what is priority for who gets housing; rural students, etc. Maybe not first come, first serve, but these details unimportant compared to getting legislation passed.

Number 0429

Michael McQuinn on behalf of UAA/ACC students: I work primarily with rural students as Orientation Officer at Anchorage Community College. Housing is a primary reason there's a high drop-out rate of Native students.

Tape 2, Side B
Recording
Number 0001

Michael McQuinn: Help make cultural transition if the Natives could live on campus.

Number 0020

Rep. Koponen: Have you decided how to split use of housing between ACC/UAA?

Number 0025

Mr. McQuinn: Seems to be good communication between both Chancellors.

Number 0048

Rep. Martin: Cost to students in borrowing for loan. Students with available housing to borrow for less than those without housing. We could save \$6 million a year by providing housing. Within three years, savings will pay for this new housing.

Number 0078

Rep. Ward asks Rep. Martin: What will the

- on going operation cost of this be if approved?
- Number 0082 Rep. Martin: I could not answer. Addition in operation would be small.
- Number 0099 Mr. McQuinn: Concerned with equal opportunity education for handicapped, from to physically handicapped. My greatest concern.
- Number 0110 David Alcott, Chancellor at University of Alaska, Anchorage: Very pleased with testimony. Concerned with accessibility to education. The money; \$15 million to provide housing for 350 students. Type of housing; concerned to provide maximum for minimum dollars. Least operating costs too.
- Number 0153 David Alcott: Hope for \$250 a month for student housing.
- Number 0168 Rep. Ward: How many students would utilize dorms if available?
- Number 0173 Mr. Alcott: Housing needs will be between 900 and 1400 students. We will make these figures available. No risk that we'll build too many rooms.
- Number 0194 Ed Bickerstaff, Chancellor at Anchorage Community College; joint partnership is growing between two campuses. Same set of standards for both schools in priority who gets housing.
- Number 0270 Chairman Tischer: Legislature sees duplication of effort from architects in school design. Why not use the functional design already designed?
- Number 0293 Mr. Bickerstaff: Students requests; privacy and cheap cost. Universities are moving increasingly away from traditional housing. Operating costs will fall almost one-half if we go from traditional dorm to the apartment style housing.
- Number 0349 Chairman Tischer: Do we have to have the ancillary help? Can't the students take the place of janitors, etc? Can we take away the frills?
- Number 0388 Rep. Ward: What about the provision for 1%

cost going to art-work? Will this hinder?

Number 0400 Mr. Bickersstaff: I think some of the art around is an asset. I'm pleased. The art is complimentary to the brick and concrete buildings. If I had choice, I'd rather put that 1% to student housing.

Number 0428 Rep. Martin: Anchorage has stereotype of students who are older, married and have housing. More freshmen coming, but leaving because of the lack of housing. We want these freshmen.

Tape 3, Side A
Recording
Number 0001 Chairman Tischer asks the witnesses to keep their testimony short. Offers to accept testimony in writing.

Number 0009 Roger Wordsley, Vice-Chair of Student Services at ACC: Our housing is not designed for older married students. Rural students coming to ACC is our highest priority.

Number 0024 Mr. Wordsley: Dorms versus apartment type, we don't plan to furnish extras. We will provide some sort of food service.

Number 0045 Sandy Berkie, Student at ACC/UAA; urged passage of HB 32. To hold on to our students, we must build housing, education is our best natural resource.

Number 0066 Rep. Ward: Student Loan Program; should that loan be made if those courses are offered here?

Number 0073 Sandy Berkie; it should be restricted. Keep resources in this state.

Number 0079 Chairman Tischer repeats Rep. Ward's question.

Number 0083 Rep. Ward: I agree with trying to help our students here.

Number 0090 Bob Baldwin, Chairman of UAA Citizen's Advisory Committee: The priorities are; classroom space and planning money to lay out campus.

Number 0110 Mr. Baldwin: Student housing; a roadblock in developing the campuses. Regret the Governor's empty promise to support this in his capital budget. The designs are not extravagant, art in public places we strongly support. We have barren campuses.

Number 0161 Rep. Ward: Public art, optional or mandatory?

Number 0183 Mr. Baldwin: Committee has no position on that.

Number 0188 Carol Lund, Director of Student Activities: Students and I support HB 32, cited popularity of bill from last year.

Number 0110 Harry Nichols, Dean of Students, UAA: Count me as another member of University community who supports this legislation. If the campus will be seen as University, housing must be provided.

Number 0235 Lee Pickard, Vice-Chairman of Campus Affairs, UAA: I support this bill, I'd like to answer any questions.

Number 0254 Chairman Tischer: If bill goes, would you need more support staff?

Number 0269 Lee Pickard: No extra staff required, you can't realistically expect students to do their own cleaning.

Number 0301 John Herring, Student at UAA; strongly supports HB 32.

Number 0334 Rep. Ward: Do you know any students who transferred out because of lack of dorms?

Number 0337 John Herring: I almost transferred because of that.

Number 0370 Ramona Suetopka-Duerre, President of Alaska Native Education Association: We're very concerned with the problem of the dorms. We strongly support HB 32.

Number 0400 John O'Shea, Representing UAA Alumni Association: I affirm all prior testimony, rural students are being discriminated against because of lacking housing.

Tape 3, Side B

Recording
Number 0001

Chairman Tischer: Introduces HB 514 and clarifies the committee is not addressing day care centers and witnesses should confine testimony to specific legislation by name.

Number 0047

Mary Wilson, Teacher, Montessori School: Limit for preschool to (4) hours (in SB 354) has our parents mad. Support HB 514.

Number 0066

Fae Scott, Secretary, Montessori School: She was against the (4) hour limitation. Our schools are very good, a good atmosphere for the citizens of tomorrow.

Number 0093

Fae Scott: We want HB 514 without amendments.

Number 0105

Safiyah Shaheed, Teacher, Montessori: Supports HB 514 without amendments.

Number 0115

Katherine Miller: In support of HB 514 as is. The (4) hour limit not germane, it's a poor criteria. Recommended deleting amendment on Page 2, Lines 22-25.

Number 0157

Margaret Green, Director, Montessori School: Our paperwork is the same as that for the University. Very controlled. I represent parents of 650 children, the (4) hour limit is unfounded. Susan Clark's past testimony did not represent the University Women. The (4) hour limit do disservice to our school.

Number 0212

Ms. Green: We do have fire safety and other health codes. Please hurry this legislation it has taken much time already.

Number 0221

Rep. Koponen: (4) hour limitation never offered by either house.

Number 0230

Rep. Uehling: Please comment later on your feelings toward SB 354.

Number 0281

Harry Bates, Principle: In favor of CSHB 514 and am against amendments 1 and 2 of CSSB 354.

Number 0332

Mac Culver: Thanked committee for interest and agreed with Mr. Bates' testimony. Substantive changes might negate agreement with Governor and Attorney General.

Number 0378 Burt Carney, Pastor: Handed out a document which he read as testimony to the committee. He supported SB 354 and was concerned with amendment 1 of CSSB 354.

Tape 3, Side B
Recording
Number 0011 Rep. Koponen: We should discuss with the Attorney General to see what the changes will be.

Number 0017 Rep. Uehling: Last three amendments are fine with you? (Yes).

Number 0041 Daniel Glover: Agreed with Mr. Carney's testimony. Parents who go to the trouble of placing their children in these private schools do care about their children, and are capable of choosing wisely for their children.

Number 0084 Kalen Saxton: In support of SB 354 with exception of amendments.

Number 0135 Mary Beth Juday: Concerned that children in day-care facilities have their needs met, children don't belong in academic programs all day long. They won't learn to be children, such as play and socialize, when they are in school all day. In favor of CSSB 354.

Number 0159 Chairman Tischer: Do you want always to reserve the right to choose for your own children? (Yes).

Number 0187 Ms. Juday: Its the government's responsibility to ensure safety and other standards for our children.

Number 0220 Tim Ewell: Restated Mr. Carney's testimony.

Number 0260 Joan Hurst: As a private citizen; she opposed both HB 514 and SB 354. The state is obliged to watch out for school's health and safety, including child/staff ratio. She said she objects to certain school exemptions.

Number 0349 Sister Eileen Brown: Agreed with most of Ms. Juday's testimony, and asked for some clarification with the language on Page 2, Line 8.

Number 0376 Rep. Koponen clarifies the language.

Number 0422 Sister Eileen Brown: We are in favor of the government's health and safety requirements and thanks the committee.

Number 0453 Patty Meritt: Both bills will increase inconsistency in regulations. She was against both bills.

Tape 4, Side A
Recording
Number 0016 Patty Meritt: Teacher with certain training should be able to teach with bigger ratios of students.

Number 0028 Rep. Koponen: Any suggestions for regulations?

Number 0032 Ms. Meritt: Look at other states, many schools have bigger ratio allowances. Age makes a difference to ratio; so does teacher qualification.

Number 0052 Doug Schmedlen: Agreed with Mr. Carney's testimony. emphasized that amendments 1 and 2 need attention, the original bill HB 514 was a good bill. Referred to concerns about subsidies.

Number 0074 Lloyd Bellamy: Agreed with Mr. Carney's testimony.

Number 0080 Edwin Rinner: As parent of four children, he believed this bill is appropriate. Appreciated the Governor's interest and that of the legislators, and also agreed with Mr. Carney's suggestions for changing the amendments.

Number 0100 Jerry Wainscott: Concurred with Mr. Carney's testimony. Thanked the committee for their work and urged passage of the bills.

Number 0115 Robert Alley: Concurred with Mr. Carney's statement and thanked the committee members.

Number 0145 Robert Bryon, Wasilla Children's Center: He supported Mr. Carney's testimony and sending 18 students from Wasilla to Peter's Creek. Next year we hope to help them in our own school in Wasilla, there will be about 40 children.

Number 0166

Walt Arden: Endorses Mr. Carney's testimony.

Number 0183

Chairman Tischer thanked the witnesses for coming to the hearing and the committee will soon put the bill on the floor.

Number 0190

No further business to come before the committee, Chairman Tischer adjourned the meeting at 3:04 p.m.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
February 8, 1984
1:20 p.m.

Members Present: Rep. Tischer, Chairman ^{mt}
Rep. Pestinger, Vice-Chair (late)
Rep. Martin
Rep. Davis
Rep. Koponen
Rep. Uehling (late)

Members Absent: Rep. Goll

COMMITTEE CALENDAR

HB 496 "An Act relating to food banks."

WITNESS REGISTER

Joe Cladouhos
Director
Division of Environmental Quality Management
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
465-2640
Position Statement: Department supports the bill.

Elizabeth Shaw
Assistant Attorney General
Department of Law
Pouch K
465-3603
Position Statement: Supports the HESS CS for HB 496.

PREVIOUS ACTION

HB 496 1/9/84 - First Reading.

Committee Referrals - HESS, Judiciary and
Rules Committees.

See HESS minutes of January 28, 1984.

ACTION NARRATIVE

TAPE#1, Side A
Recording
Number 0001
Chairman Tischer called the meeting to order

at 1:20 p.m., and recognized the members present. She announced the committee calendar, welcomed all teleconference sites and stated her intent to move the bill out of committee.

Number 0022 Rep. Martin moved that CSHB 496 (HESS) be brought up for consideration. No objection, so ordered.

Number 0026 Chairman Tischer called the first witness to testify, Rep. Koponen who is the sponsor of the bill.

Number 0037 Rep. Koponen stated that the liability is limited to constructive knowledge of any type of fraud. The committee substitute defines liability as gross negligence rather than legal negligence. The law is written in one section of the bill so people don't have to pick around. The donor section defines donor as farmer, retailer, wholesale, freight company, etc. It excludes manufactures of canned foods, said Rep. Koponen.

Number 0078 Chairman Tischer asks if Matanuska Maid made sour cream and something happened so the package didn't look good, could they give that to a food bank?

Number 0102 Rep. Koponen responds yes, that is better than the indigents picking through the garbage bins.

Number 0110 Joe Cladouhos from the Department of Environmental Conservation stated that the Department supports HB 496 and they had no problems with the present language.

Number 0122 Representatives Pestinger and Uehling are now present for the committee meeting.

Number 0129 Elizabeth Shaw from the Department of Law is the next witness to testify. She defines liability of donors; one of the problems for the original bill was that it didn't change the standards that applied to food donors. We wanted the new bill to define standards of negligence, said Ms. Shaw.

Elizabeth Shaw said theory or negligence presupposes a standard of behavior and that's the reasonable and prudent person

standard. The juries use that standard to determine negligence, they want people to act reasonably and prudently at all times - doing what a reasonable and prudent person would do. This encourages donors to give to food banks and this donor would not be liable if he acted reasonably and prudently.

Ms. Shaw continues. This bill has two categories; one is a donor which excludes those of commercial capacities. Retailers, however, would be considered a donor.

Page 1, line 13: previous draft stated injury not be attributed to donor if not a direct result. We questioned the use of direct, said Ms. Shaw.

Page 2, line 7: The in food bank, injury or death is not a direct result. There is an intentional difference between the two standards.

Number 0230

Chairman Tischer asks for questions.

Number 0233

Rep. Pestinger moved that CSHB 496 (HESS) be passed out of committee with individual recommendations. No objections, so ordered. Representatives Tischer, Pestinger, Martin, Uehling, Davis and Koponen signed a "do pass" recommendation.

Number 0254

No further business to come before the committee, Chairman Tischer adjourned the meeting at 1:58 p.m.